

EX PARTE OR LATE FILED

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526

Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial: 202-828-2226

A5691.524

RECEIVED

APR 11 1997

April 11, 1997

Federal Communications Commission
Office of Secretary

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

EX PARTE
PRESENTATION

Re: *State Tariffing Requirements of the Commission's Orders in*
Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth:

This letter responds, on behalf of the American Public Communications Council ("APCC"), to Michael Kellogg's letter on behalf of the RBOC Payphone Coalition, requesting a temporary waiver of the state tariffing requirements of the Payphone Orders.¹ Letter from Michael K. Kellogg to Mary Beth Richards, dated April 10, 1997 ("April 10 RBOC Letter").

While the RBOC Coalition states it was unaware until the Bureau's Order of April 4, 1997, that the "new services" test applied to previously tariffed services offered to payphone service providers ("PSPs"), the Reconsideration Order is crystal clear on this point. Paragraph 163 expressly states that "existing tariffs" are subject to the requirements of the Order, and those requirements, also enumerated in Paragraph 163, expressly include the requirement that state tariffs be cost based and in accordance with the new services test. Whatever ambiguity may have clouded the federal tariffing requirement, there is no

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996), Report and Order, FCC 96-388, released September 20, 1996 ("Payphone Order"), Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Reconsideration Order").

Mary Beth Richards
April 11, 1997
Page 2

ambiguity about the state tariffing requirement and the new services test. The RBOC Coalition's protestations of surprise are utterly lacking in credibility.²

Local exchange carriers that have not yet complied with these clearcut requirements -- five months after issuance of the Reconsideration Order -- cannot legitimately complain of hardship warranting a waiver of the state tariffing requirements to allow them to collect compensation.

Nevertheless, APCC recognizes that LECs that have failed to timely comply may shortly be placed in the position of both ceasing to collect the payphone subsidy from interstate access charges and failing to be eligible for interim dial-around compensation. APCC also agrees that the FCC's objective should be to ensure that PSPs compete on a level playing field as the era of full payphone competition begins. April 10 RBOC Letter at 2.

APCC believes that the appropriate solution to these problems is neither to allow LECs to collect dial-around compensation in the face of their failure to comply with a clear Commission directive nor to permit a haphazard approach to tariffing compliance. Allowing a LEC to collect compensation designed for participants in a fully competitive market *before* complying with a key condition for any competitive telecommunications market -- cost-based interconnection with bottleneck facilities -- would be contrary to the basic purposes of the Act and the Payphone Orders. And the Commission must ensure that *all* state tariffs for all PSP services (including services for "smart³ and dumb

² In Michael Kellogg's April 3 Letter to you, the RBOC Coalition indicates that one reason they did not believe that the new services test applied to state-tariffed services is that such a requirement would be "an unprecedented expansion of federal requirements into an area of intrastate service that traditionally has been governed by the States." Letter from Michael K. Kellogg to Mary Beth Richards and Kathy Franco, dated April 3, 1997. This is an amazing display of hubris, in light of the RBOC's vigorous advocacy, throughout this proceeding, of FCC deregulation of the local coin calling rate. Of course, both the deregulation of the local calling rate and the application of a federal pricing standard to LEC services to PSPs are fully authorized by the express statutory authorization to preempt any inconsistent state requirements. 47 U.S.C. § 276(c).

³ The Commission's Order in this matter must be crystal clear. In this latest ex parte letter, the RBOC Coalition does not even mention any intention to refile their state "coin line" tariffs, even though they purportedly believed those tariffs were not subject to the new services test either at the time they were filed. April 10 RBOC Letter at 1 ("It was our good faith belief that the "new services" test applied only to new services at the federal (Footnote continued)

payphones," Reconsideration Order, ¶ 163 (emphasis added)) are priced under the same cost-based formula.

Accordingly, APCC believes that a LEC should be allowed, if it wishes, to defer the effective date of the Payphone Orders' detariffing requirements for a 90-day period to allow them to bring their state payphone services tariffs into compliance with the Payphone Orders, provided that the LEC refiles *all* its state-tariffed services offered to PSPs, so as to ensure state commissions an opportunity to review all payphone interconnection services under the required uniform pricing standard. The RBOCs should not be left to decide for themselves which existing tariffs meet the new services test. The history of this proceeding demonstrates that that will only lead to needless disputes and another round of filings and the need to again clarify for the RBOCs what is covered by the filing requirement. The Commission must simply order *all* tariffs to be refiled.⁴

A temporary waiver of the April 15 effective date for detariffing is more consistent with the purposes of the Payphone Orders and is more likely to avoid difficulties that result from "on again, off again" LEC eligibility for compensation than the RBOC proposal. Further, it is more than fair to the LECs in light of their repeated ignoring of the Commission's Orders, allowing them options to mitigate the consequences of their failure to follow Commission Orders while advancing the goal of competitive parity among payphone providers.

(Footnote continued)

level") (second emphasis added). All PSP services must meet the same test. [Footnote added; not in Reconsideration Order.]

⁴ A 90-day period should be sufficient to complete state proceedings. If, at the end of that period, some states still have not determined whether a LEC's services are priced in accordance with the Payphone Orders, APCC believes that the Commission might appropriately allow the LEC, if it wishes, to enter into a voluntary accounting order of the type suggested in the April 10 RBOC Letter to provide for nunc pro tunc retroactive compliance with the payphone service tariffing requirements. A LEC electing to follow this procedure would be deemed to have satisfied the state payphone service tariffing requirements. Obviously, if the state commission proceedings are not complete, a LEC not following this procedure would not be in compliance with the requirement for tariffing payphone services at the state level.

Mary Beth Richards
April 11, 1997
Page 4

A copy of this letter is being provided to Michael Kellog and to representatives of the major IXC's at the time of its filing.

Sincerely,



Albert H. Kramer

AHK/nw

cc: Dan Abeyta	Regina Keeney
Thomas Boasberg	Linda Kinney
Craig Brown	Carol Matthey
Michelle Carey	A. Richard Metzger
Michael Carowitz	John B. Muleta
James Casserly	Judy Nitsche
James Coltharp	Brent Olson
Rose M. Crellin	Michael Pryor
Kathy Franco	Blaise Scinto
Dan Gonzalez	Anne Stevens
Christopher Heimann	Richard Welch
Radhika Karmarkar	